

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9281
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating his ANFC grant based on "incapacity". The issue is whether the petitioner is no longer "incapacitated" within the meaning of the pertinent regulations.

FINDINGS OF FACT

The essential facts are not in dispute. The petitioner is a thirty-five year old man with a work history of mostly-arduous, unskilled, physical labor. In 1977, he was involved in a serious car accident that resulted in the amputation of his left leg below the knee. He lives in a small town near the Canadian border.

The petitioner has an eleventh-grade education, but has difficulties reading and writing. He is presently involved in an adult education course designed to prepare him to take the G.E.D. examinations. The course is provided through the Division of Vocational Rehabilitation. The petitioner has been advised that he will need from one to two more years of study before he can pass the G.E.D. test.

The petitioner's primary medical problem is the

frequent "breakdown" of the skin graft on the stump of his leg. He has been fitted for a prosthesis, but he can wear this steadily only a few days at a time due to the skin irritation and infection it causes on his leg.

The department concedes that the petitioner cannot return to his past work or any other job that would require continual standing or walking. The petitioner concedes that he has the physical ability to perform sedentary work.¹ However, there was no evidence offered by either party as to the existence of unskilled sedentary jobs that petitioner could perform.

ORDER

The department's decision is reversed.

REASONS

W.A.M. § 2332 includes the following definitions of "physical or mental incapacity":

A child is deprived of "parental support" when a parent is unable, due to his or her physical or mental condition, to maintain his or her earning capacity for a period of not less than 30 days from the date of application. If an applicant for ANFC Incapacity works 35 hours or more per week he or she is not eligible on the basis of incapacity.

. . .

Applicants who have been determined to be "disabled" by the Social Security Disability Determination Unit will meet the incapacity criteria for ANFC.

In addition to the above, W.A.M. § 2332.4 provides as follows:

A closure of ANFC incapacity must be based on the fact that the incapacity no longer prevents the recipient from fulfilling his or her role either as a wage earner or as a homemaker for the assistance group.

Since this appeal concerns an action to terminate the petitioner's ANFC benefits, the burden of proof is on the department to establish that the petitioner is not "incapacitated" according to the above regulations. Human Services Board Fair Hearing Rule No. 12. Based on the evidence presented (or lack thereof), it must be concluded that the department has not met this burden.

At the outset it must be emphasized that "incapacity" is not the same as "disability", as the latter term is defined by Social Security (SSDI), Supplemental Security Income (SSI), and Medicaid purposes. See 20 C.F.R. §§ 404.1505 and 416.905 and Medicaid Manual § M211.2. The difference in the two definitions is not only the duration requirement--30 days for ANFC as opposed to one year for SSDI/SSI/Medicaid--but also in the consideration of the "availability" of jobs to an individual applicant or recipient.

The definition of "disability" under SSDI, SSI, and Medicaid provides that one must be unable to perform jobs which exist in the "national economy". See 20 C.F.R. §§ 404.1566 and 416.966. The disability regulations (Id) specify:

It does not matter whether--(1) Work exists in the immediate area in which you live; (2) a specific job vacancy exists for you; or (3) your would be hired if you applied for work.

Clearly, however, the above analysis is not applicable to "incapacity" determinations under the ANFC program.² An individual cannot, in fact, "fulfill his . . . role . . . as a wage earner" (see W.A.M. § 2332.4, supra) unless there are jobs available to him that can accommodate his particular disability. In this case, the department admits that the petitioner is limited to, at most, sedentary work. It offered no evidence, however, that sedentary jobs exist in the petitioner's community that the petitioner (considering his age, education, and experience) is capable of performing. Unlike SSDI, SSI, and Medicaid,³ there is no basis in the ANFC regulations for the department or the board to take "notice" of the existence of such jobs; and in the petitioner's case it certainly cannot be concluded that common knowledge dictates such a finding.

The board has repeatedly and consistently adhered to the above analysis in deciding ANFC-incapacity cases. See, e.g., Fair Hearing Nos. 6613, 6545, 5570, and 5513. The department has presented no logical reason to now depart from this oft-cited standard.⁴ Inasmuch as the department has failed to meet an essential element of its burden of proof--i.e., the existence of jobs the petitioner can perform--it cannot be concluded that the petitioner is no longer "incapacitated" within the meaning of the above

regulations. The department's decision is, therefore, reversed.

FOOTNOTES

¹At the suggestion of the hearing officer, and in keeping with the regulations (see W.A.M. § 2332.4), the petitioner was given the opportunity to apply for ANFC as an "unemployed parent". The department determined, however, that he did not have sufficient "work quarters" to qualify for ANFC on this basis. The petitioner does not contest the department's decision regarding his ANFC-UP application. See W.A.M. § 2333 et seq.

²Although a finding of "disabled" for SSDI, SSI, or Medicaid purposes is dispositive of eligibility for ANFC incapacity, see § 2332 (supra), neither the inverse nor the converse is true.

³See 20 C.F.R. § 404, Subpart P, Appendix II, commonly referred to as the "grid" regulations.

⁴Until September, 1977, there existed in the regulations (at W.A.M. § 2332.2) a provision under which the department was to "coordinate" with the Division of Vocational Rehabilitation services to "incapacitated" recipients of ANFC. In past cases, the board chided the department for attempting to terminate ANFC-incapacity benefits to individuals for whom those services had never been offered. See Fair Hearing Nos. 6613, 6545, 5570 and 5513. As of September 1, 1977, however, this provision was stricken from the regulations. The department maintains that this was in "response" to the above-cited fair hearings. The hearing officer and the board are at a loss, however, to understand the department's apparent contention that the mere removal of the "coordinated services" provision in § 2232.2 altered or amended the basic definition of incapacity contained in the above-cited regulations as interpreted by the above-cited fair hearings.

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